

**FCC REPORT TO CONGRESS  
AS REQUIRED BY THE ORBIT ACT**

Adopted: June 13, 2005

Released: June 15, 2005

**FCC REPORT TO CONGRESS AS REQUIRED BY THE ORBIT ACT****SIXTH REPORT**

This report is submitted in accordance with Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (the “ORBIT Act”).<sup>1</sup>

Section 646 states:

(a) ANNUAL REPORTS - The President and the Commission shall report to the Committees on Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate within 90 calendar days of the enactment of this title, and not less than annually thereafter, on the progress made to achieve the objectives and carry out the purposes and provisions of this title. Such reports shall be made available immediately to the public.

(b) CONTENTS OF REPORTS - The reports submitted pursuant to subsection (a) shall include the following:

(1) Progress with respect to each objective since the most recent preceding report.

(2) Views of the Parties with respect to privatization.

(3) Views of the industry and consumers on privatization.

(4) Impact privatization has had on United States industry, United States jobs, and United States industry’s access to the global marketplace.

**I. Progress as to Objectives and Purposes**

The purpose of the ORBIT Act is “to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.”<sup>2</sup>

The ORBIT Act, as originally passed in 2000: (1) mandates the privatization of INTELSAT and Inmarsat; (2) establishes criteria to ensure a pro-competitive privatization; (3) requires the Commission to determine whether INTELSAT, Inmarsat, and the INTELSAT spin-off, New Skies Satellites N.V. (“New Skies”), have been privatized in a manner that will harm competition in the United States; (4) requires the Commission to use the privatization criteria specified in the ORBIT Act as a basis for making its competition determination; and (5) directs the Commission to “limit

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<sup>1</sup> 47 U.S.C. § 765e (2000).

<sup>2</sup> 47 U.S.C. § 761 NOTE.

through conditions or deny” applications or requests to provide “non-core” services to, from, or within the United States if it finds that competition will be harmed.<sup>3</sup> It provides for certain exceptions to limitations on non-core services in the event of such a determination. The Act also prohibits the Commission from authorizing certain “additional” services pending privatization consistent with the criteria in the Act.<sup>4</sup> In addition, the Act directs the Commission to undertake a rulemaking proceeding to assure U.S. users the opportunity for direct access to the INTELSAT system. In October 2004, Congress amended the ORBIT Act, adding Sections 621(5)(F) and (G), to provide a certification process as an alternative to the IPO requirements under Sections 621(5)(A) and (B).<sup>5</sup>

The Commission made its first report to Congress on its actions to implement the ORBIT Act on June 15, 2000, following enactment of the Act on March 17, 2000.<sup>6</sup> The Commission made its second report on June 15, 2001,<sup>7</sup> its third report on June 14, 2002,<sup>8</sup> its fourth report on June 11, 2003,<sup>9</sup> and its fifth report on June 15, 2004.<sup>10</sup> In anticipation of this sixth report, the Commission issued a Public Notice on March 25, 2005 inviting public comment appropriate to its development.<sup>11</sup> Comments were filed by: Inmarsat Group Holdings, Limited (“Inmarsat”) and Intelsat LLC (“Intelsat”). No reply comments were filed.

#### A. Commission Actions and Activities

The Commission has undertaken a number of actions required by the ORBIT Act, or related to its objectives and purposes. The Commission has taken the actions described below to ensure that INTELSAT, Inmarsat, and New Skies have been privatized in a procompetitive

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<sup>3</sup> The Act defines “non-core” services as “services other than public-switched network voice telephony and occasional-use television” with respect to INTELSAT, and as “services other than global maritime distress and safety services or other existing maritime or aeronautical services for which there are not alternative providers” with respect to Inmarsat. 47 U.S.C. § 769(a)(11).

<sup>4</sup> The Act defines “additional” services as “direct-to-home” (“DTH”) or direct broadcast satellite (“DBS”) video services, or services in the Ka or V bands” for INTELSAT and as “those non-maritime or non-aeronautical mobile services in the 1.5 and 1.6 GHz band on planned satellites or the 2 GHz band” for Inmarsat. 47 U.S.C. § 769(a)(12).

<sup>5</sup> Public Law No. 108-371, 118 Stat. 1752 (October 25, 2004).

<sup>6</sup> *FCC Report to Congress as Required by the ORBIT Act*, 15 FCC Rcd 11288 (2000).

<sup>7</sup> *FCC Report to Congress as Required by the ORBIT Act*, 16 FCC Rcd 12810 (2001).

<sup>8</sup> *FCC Report to Congress as Required by the ORBIT Act*, 17 FCC Rcd 11458 (2002).

<sup>9</sup> *FCC Report to Congress as Required by the ORBIT Act*, 18 FCC Rcd 12525 (2003).

<sup>10</sup> *FCC Report to Congress as Required by the ORBIT Act*, 19 FCC Rcd 10891 (2004).

<sup>11</sup> Public Notice, Report No. SPB-211, March 25, 2005.

manner, consistent with the privatization criteria of the Act.<sup>12</sup> The Commission has also taken these actions to implement certain deregulatory measures in the Act.<sup>13</sup>

### ***INTELSAT***

- In August 2000, the Commission granted conditional licensing authority to Intelsat LLC, (“Intelsat”), a separate, privately held U.S. corporation created by INTELSAT to hold U.S. satellite authorizations and associated space segment assets.<sup>14</sup> Under this conditional licensing authority, the Commission permitted Intelsat LLC’s licenses to become effective upon “privatization,” meaning the transfer of INTELSAT’s satellites and associated assets to Intelsat and the transfer of its ITU network filings to the U.S. registry. Intelsat LLC was granted conditional U.S. authorizations for INTELSAT’s existing satellites, planned satellites, and planned system modifications associated with INTELSAT’s frequency assignments in the fixed satellite services (“FSS”) C- and Ku- bands existing as of privatization.<sup>15</sup>
- Later in 2000, INTELSAT adopted plans to distribute shares in Intelsat LLC to its Signatories on July 18, 2001.<sup>16</sup> In May 2001, the Commission found that, although the initial public offering (“IPO”) required under the privatization requirements of the ORBIT Act had not yet been completed, INTELSAT would privatize in a manner consistent with the non-IPO privatization provisions of the ORBIT Act, upon completion of its plans to distribute Intelsat LLC shares to its Signatories.<sup>17</sup> INTELSAT later distributed shares to its Signatories as it had planned.

<sup>12</sup> 47 U.S.C. §§ 761, 763, 763a, 763b, 763c, and 765g.

<sup>13</sup> 47 U.S.C. §§ 765 and 765d(1).

<sup>14</sup> See Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 15 FCC Rcd 15460, *recon. denied*, 15 FCC Rcd 25234 (2000), *further proceedings*, 16 FCC Rcd 12280 (2001) (“*Intelsat Licensing Order*”).

<sup>15</sup> See *Intelsat Licensing Order*, 15 FCC Rcd 15460. The conventional C-band refers to the 3700-4200/5925-6425 MHz frequency bands. Intelsat is also authorized to operate in the extended C-band frequencies 3625-3700/5850-5925/6425-6650 MHz on certain satellites at certain orbital locations. In addition, Intelsat is authorized to operate in the extended C-band frequencies 3420-3625 MHz on the Intelsat-805 satellite at 55.5° W.L. for service to non-US locations. The 3420-3600 MHz portion of this frequency band is not a satellite band in the U.S. and is operated by Intelsat outside the U.S. subject to potential interference from worldwide shipborne U.S. military radar operations. The conventional Ku-band refers to the 11.7-12.2/14.0-14.5 GHz frequency bands. Intelsat is also authorized to operate in the extended Ku-frequency bands 10.95-11.2/11.45-11.7/12.5-12.75/13.75-14.0 GHz on certain satellites at certain orbital locations.

<sup>16</sup> Upon privatization, former INTELSAT Signatories and non-Signatory investing entities were issued shares in Intelsat Ltd. according to their March 2001 investment shares in INTELSAT. They will be shareholders of Intelsat Ltd. until it conducts an IPO.

<sup>17</sup> See Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 12313, 12290. (para 71) (2001) (*Intelsat LLC ORBIT Act Compliance Order*”).

- Since the Fifth Annual Report, Intelsat has filed a number of requests for license modifications. The Commission has reviewed these requests and acted on them consistent with the United States licensing process.<sup>18</sup> More recently, Intelsat North America LLC filed applications to operate in the 17/24 GHz BSS band.<sup>19</sup> Specifically, on February 10, 2005, Intelsat filed an application for authority to construct, launch, and operate a system of four satellites that will provide broadcast satellite service in the 17/24 GHz and 25 GHz bands from four orbital locations – 67.5° W.L., 89.0° W.L., 97.0° W.L., and 121.0° W.L. Intelsat proposes to use these satellites to provide video, audio, data, and multimedia services to residential subscribers in the United States, as well as Canada, Central America, and South America, subject to obtaining the requisite non-U.S. regulatory approvals to do so. These applications are pending.
- On July 28, 2003, Loral Satellite Inc. (“Debtor-in-Possession” or “DIP”), and Loral SpaceCom Corporation (DIP), and Intelsat North America, LLC filed an application seeking authority to assign five non-common carrier space station licenses to Intelsat North America. On February 11, 2004, the International Bureau (“Bureau”) granted, subject to conditions, authority to assign those licenses as well as the request, subject to limitations, to hold those licenses on both a common carrier and non-common carrier basis.<sup>20</sup> Loral was providing services, such as DTH, that are “additional

<sup>18</sup> See e.g., Intelsat LLC, Amendment to Application to Modify Authorization For the INTELSAT 706 Satellite to Operate at the 50.25° E.L orbital location, File Nos., SAT-AMD-20040903-00165, SAT-MOD-20040730-00152, (stamp grant from Andrea Kelly, Chief, Policy Branch to Sue Crandall, Counsel for Intelsat LLC, provided on October 28, 2004, with conditions); Intelsat LLC, Application for Special Temporary Authority to Conduct In-Orbit Testing of the INTELSAT 10-02 Satellite at 1.0° E.L., File No. SAT-STA-20040713-00131, (stamp grant from Andrea Kelly, Chief, Policy Branch to Sue Crandall, Counsel for Intelsat LLC, provided on July 20, 2004, with conditions); Intelsat North America LLC, Request For Extension of Launch Milestone Date of the INTELSAT IA-8 Satellite, File No., SAT-MOD-20040727-00148, (stamp grant from Andrea Kelly, Chief, Policy Branch to Sue Crandall, Counsel for Intelsat LLC, provided on September 30, 2004, with conditions); Intelsat LLC, Amendment to Application to Modify Authorization to Operate and Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, File Nos., SAT-AMD-20050224-00049, SAT-MOD-20050214-00037, (granted pursuant to streamlined fleet management procedures under Section 25.118(e) of the Commission’s rules to move the INTELSAT 605 satellite from 32.9° E.L. to 174° E.L.; grant effective March 16, 2005.)

<sup>19</sup> See Intelsat North America LLC, Application for Authority to Construct, Launch and Operate a Direct Broadcast Satellite system comprised of four satellites in the 17 GHz and 25 GHz Bands, IBFS File Nos. SAT-LOA-20050210-00028 (Call Sign S2659), SAT-LOA-20050210-00029 (Call Sign S2660), SAT-LOA-20050210-00030 (Call Sign S2661) and SAT-LOA-20050210-00031 (Call Sign S2662).

<sup>20</sup> Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, *Authorization and Order*, 19 FCC Rcd 2404 (Int’l Bur., 2004) (“*Loral/Intelsat Order*”). On March 4, 2004, the International Bureau adopted a Supplemental Order clarifying the date at which the Special Temporary Authority was to commence. Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, *Supplemental Order*, 19 FCC Rcd 4029 (Int’l Bur., 2004).

services” as defined by the ORBIT Act. Intelsat was granted a 180-day Special Temporary Authority (“STA”) to provide additional services to the then existing Loral customers.<sup>21</sup> On July 30, 2004, the Bureau granted Intelsat’s STA Extension Request for an additional 180 days, from September 14, 2004 to March 14, 2005.<sup>22</sup> On March 14, 2005<sup>23</sup> and on April 13, 2005,<sup>24</sup> Intelsat was granted 30-day extensions of the STA to maintain the status quo, pending the Commission’s ruling on the matters relating to Intelsat’s legal status under the ORBIT Act to provide “additional services.” No further STAs are required as a result of the Commission’s action on April 8, 2005, discussed below.

- Intelsat was originally required by the ORBIT Act to conduct an IPO by October 1, 2001 to “substantially dilute” ownership by former INTELSAT Signatories. The ORBIT Act also gave the Commission discretion to extend this deadline to no later than December 31, 2002. Since that time, Congress has amended the ORBIT Act to extend Intelsat’s IPO deadline to June 30, 2005, and to provide the Commission with the discretionary authority to further extend the deadline to no later than December 31, 2005.<sup>25</sup>
- On March 15, 2004, Intelsat LLC filed with the U.S. Securities and Exchange Commission (“SEC”) a registration statement on Form F-1 in connection with its IPO. On April 22, 2004, Intelsat LLC filed an amendment to the March 15 registration statement. On May 21, 2004, Intelsat issued a press release announcing that it had withdrawn its planned initial public offering and that it intended to explore strategic alternatives.<sup>26</sup> On May 21, 2004, Intelsat filed a second amendment to its registration statement withdrawing the registration statement and confirming that no ordinary shares of Intelsat had been sold in connection with the proposed offering.<sup>27</sup>

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<sup>21</sup> *Loral/Intelsat Order*, 19 FCC Rcd at 2429 (para 65). SES filed an Application for Review of this decision on March 12, 2004. SES also filed a Motion for Expedited Consideration in part of the Application for Review, asking the Commission to vacate the STA as unlawful. On March 29, 2004, Intelsat filed an Opposition to SES Application for Review.

<sup>22</sup> Intelsat North American, LLC Request for Extension of Special Temporary Authority, File No. SAT-STA-20040615-00116, *Order*, 19 FCC Rcd 14807 (Int’l Bur., 2004).

<sup>23</sup> Intelsat North American, LLC Request for Extension of Special Temporary Authority, *Order*, File No. SAT-STA-20050228-00052, (Int’l Bur., rel. March 14, 2005).

<sup>24</sup> Intelsat North American, LLC Request for Extension of Special Temporary Authority, *Order*, DA 05-1061, File No. SAT-STA-20050228-00052, (Int’l Bur., rel. April 13, 2005).

<sup>25</sup> Public Law No. 108-228, 118 Stat. 644 (May 18, 2004).

<sup>26</sup> Intelsat Press Release “*Intelsat Announces Decision to Withdraw Planned Initial Public Offering of Shares and Intention to Explore Strategic Alternatives*,” Press Release: 2004-17, May 21, 2004.

<sup>27</sup> *Intelsat, Ltd., Amendment No. 2 to Form F-1 Registration Statement under the Securities Act of 1933*, May 21, 2004, (“*Intelsat, Amendment 2 to F-1 Registration Statement*”).

- In October 2004, Congress amended the ORBIT Act, adding Sections 621(5)(F) and (G), to provide a certification process as an alternative to the IPO requirements under Sections 621(5)(A) and (B).<sup>28</sup>
- On December 22, 2004, the Commission authorized the transfer of control of Intelsat's licenses and authorizations to Zeus Holdings Limited ("Zeus"), a private equity group, organized under Bermuda law, which would acquire 100 percent of the equity and voting interests of Intelsat ("Zeus/Intelsat Transaction"). Zeus is wholly owned by 20 entities, which are ultimately controlled by four private equity fund groups. The fund groups are advised by Apax Partners, Apollo, Madison Dearborn and Permira, with each fund group holding 25 percent of the shares of Zeus.
- On December 23, 2004, Intelsat filed a Petition for Declaratory Ruling and Certification pursuant to Section 621(5)(F) of the ORBIT Act. After receiving a Supplemental Submission, the Commission placed Intelsat's Petition for Declaratory Ruling and Certification on public notice. On January 28, 2005, Intelsat informed the Commission that the Zeus/Intelsat Transaction, as provided for in the Zeus/Intelsat Order and Authorization, had been consummated, and on February 9, 2005, Intelsat filed an updated Certification to reflect the consummation of the Zeus/Intelsat Transaction. On April 8, 2005, the Commission determined that Intelsat's certification was in compliance with Sections 621(5)(F) and 621(5)(G) of the ORBIT Act, that Intelsat can forgo the requirement for an IPO and the public listing of securities, and that Intelsat was no longer subject to the provisions of Section 602 that prohibited Intelsat from providing "additional services."<sup>29</sup>

### ***Inmarsat***

- Inmarsat privatized on April 15, 1999, prior to enactment of the ORBIT Act. The ORBIT Act specified a number of criteria for determining whether Inmarsat's privatization is pro-competitive. On October 9, 2001, the Commission released an Order in which it concluded that Inmarsat had privatized in a manner consistent with the non-IPO requirements of Sections 621 and 624 of the ORBIT Act.<sup>30</sup>
- In this decision, having found that Inmarsat had privatized in a manner consistent with the non-IPO requirements of the Act, the Commission granted Comsat Corporation; Stratos Mobile Networks, LLC; SITA Information Computing Canada, Inc.; Honeywell, Inc.; Marisat Communications Network, Inc.; and Deere &

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<sup>28</sup> Public Law No. 108-371, 118 Stat. 1752 (October 25, 2004).

<sup>29</sup> Intelsat, Ltd. Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act, *Memorandum Opinion and Order*, FCC 05-86, adopted April 8, 2005, released April 15, 2005, IB Docket 05-18 ("*Intelsat Certification*").

<sup>30</sup> Comsat Corporation et. al., *Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661 (2001) ("*Inmarsat ORBIT Act Compliance Order*").

Company permanent earth station authority to use Inmarsat for communications services to, from, or within the United States.<sup>31</sup>

- The Commission also granted several other earth station applications to communicate with Inmarsat's satellites as a point of communication.<sup>32</sup>
- The ORBIT Act originally required Inmarsat to conduct an IPO no later than October 1, 2000. The Act also permitted the Commission to extend this deadline to no later than December 31, 2001.<sup>33</sup> Since that time, Congress has amended the ORBIT Act several times to extend the deadline for Inmarsat to conduct an IPO. On June 30, 2003, Congress extended Inmarsat's IPO deadline to June 30, 2004, and gave the Commission discretion to further extend this deadline to no later than December 31, 2004.<sup>34</sup> On June 25, 2004, the Bureau granted the request by Inmarsat for an extension of the deadline for conducting an IPO from June 30, 2004 to December 31, 2004,<sup>35</sup> and on October 25, 2004, Congress extended the IPO deadline to June 30, 2005.<sup>36</sup>
- On February 10, 2004, Inmarsat filed a letter informing the Commission of a series of transactions, which it describes as constituting an IPO pursuant to Inmarsat's remaining ORBIT Act requirements. The two transactions were: (1) an equity transaction, by which a 52.28% equity interest was sold to funds advised by Apax Partners and Permira, and Inmarsat management acquired a 4.75% ownership interest; and (2) a public offering of debt in which Inmarsat issued \$375 million of 7 5/8% "Series A" notes due in 2012.<sup>37</sup> The Commission issued a Public Notice seeking comment on Inmarsat's compliance with the Orbit Act IPO requirement. MSV and SES filed comments requesting that the Commission reject Inmarsat's claims, and Telenor Satellite, Inc ("Telenor"), Stratos and Deere & Company submitted comments in support of Inmarsat's claims.

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<sup>31</sup> See 47 U.S.C. § 761(a), which precludes Commission authorization of additional services by Inmarsat until Inmarsat has privatized in accordance with the Act.

<sup>32</sup> See e.g., Exxon Communications Company, SES-LIC-20040413-00548, granted August 31, 2004 to access the INMARSAT Ltd. 1 satellite at 15.5° W.L., the INMARSAT Ltd. 3 satellite at 178° E.L., and the INMARSAT Ltd. 3 satellite at 54° W.L. and Telenor Satellite, SES-MOD-20041029, granted March 4, 2005 to access INMARSAT Ltd. 3 satellite at 15.5° W.L., INMARSAT Ltd. 3 satellite at 54° W.L., INMARSAT-2 AOR-EAST satellite at 17° W.L., and INMARSAT-2 AOR-WEST satellite at 98° W.L.

<sup>33</sup> 47 U.S.C. § 763 (5)(A)(ii).

<sup>34</sup> ORBIT Technical Corrections Act of 2003, Pub. L. No. 108-39, § 763, 117 Stat. 835 (2003).

<sup>35</sup> See Inmarsat Ventures Limited Request for Extension of Time under Section 621(5) of the Communications Satellite Act of 1962, as amended by the Open-Market Reorganization for the Betterment of International Telecommunications Act, *Order*, 19 FCC Rcd 11387 (2004).

<sup>36</sup> Public Law No. 108-371, 118 Stat. 1752 (October 25, 2004).

<sup>37</sup> Letter from Alan Auckenthaler, Inmarsat, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Feb. 10, 2004) (File No. SAT-MS-2004021-00027).



- In October 2004, Congress amended the ORBIT Act, extending the IPO deadline for Inmarsat to June 30, 2005 and adding Sections 621(5)(F) and (G), to provide a certification process as an alternative to the IPO requirements under Sections 621(5)(A) and (B).<sup>38</sup>
- On November 15, 2004, Inmarsat certified to the Commission that it had fulfilled the amended privatization requirements of Section 621(5) of the ORBIT Act, and it petitioned the Commission to determine that its certification complied with the remaining privatization criterion of the ORBIT Act. On December 16, 2004, Inmarsat supplemented its request with additional information on the ownership interests of the intergovernmental organization, International Mobile Satellite Organization.
- On June 14, 2005, the Commission determined that Inmarsat's certification was in compliance with Sections 621(5)(F) and 621(5)(G), that Inmarsat can forgo the requirement for an IPO and the public listing of securities, and that Inmarsat was no longer subject to the provisions of Section 602 that prohibited Inmarsat from providing additional services and required the United States to oppose or decline to facilitate applications for new orbital locations to provide additional services.<sup>39</sup>

### *New Skies Satellites*

- New Skies is the Netherlands-based INTELSAT spin-off, created in 1998 as INTELSAT's first step toward privatization. On March 29, 2001, the Satellite Division added four satellites operated by New Skies to the "Permitted Space Station List"<sup>40</sup> with conditions to remove secondary status requirements for certain New Skies' satellites. This action enabled New Skies to provide satellite services to, from, and within the United States on a full-term basis.<sup>41</sup>

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<sup>38</sup> Public Law No. 108-371, 118 Stat. 1752 (October 25, 2004).

<sup>39</sup> Inmarsat Group Holdings Limited Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act, *Memorandum Opinion and Order*, IB Docket 04-439, FCC 05-126, released June 14, 2005 ("*Inmarsat Certification*").

<sup>40</sup> The Permitted Space Station List denotes all satellites and services with which U.S. earth stations with "routinely" authorized technical parameters operating in the conventional C- and Ku-bands ("ALSAT" earth stations) are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' licenses. Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic International Satellite Service in the United States, *First Order on Reconsideration*, 15 FCC Rcd 7207 (1999).

<sup>41</sup> See New Skies Satellites, N.V., Petition for Declaratory Ruling, *Order*, 16 FCC Rcd 6740 (Sat. and Radio. Div., 2001).

- On June 25, 2004, the Commission granted an application to transfer control of Commission licenses and authorizations held by New Skies Satellites N.V. and New Skies Networks, Inc. to New Skies Satellites B.V.<sup>42</sup>
- Since privatization, the Commission also granted several requests from earth station operators to add New Skies satellites as a point of communication.<sup>43</sup>

### *Status of Comsat*

- The ORBIT Act terminated the Communications Satellite Act of 1962's ownership restrictions on COMSAT Corporation ("Comsat"). As a result, Lockheed Martin and Comsat jointly filed an application with the Commission for transfer of control of Comsat's various licenses and authorizations. On July 31, 2000, the Commission found that Lockheed Martin's purchase of Comsat was in the public interest and authorized Comsat to assign its FCC licenses and authorizations to a wholly-owned subsidiary of Lockheed Martin Corporation.<sup>44</sup>
- On April 23, 2001, Comsat and Lockheed Martin jointly filed applications to assign four non-common carrier earth station licenses to Intelsat LLC and also filed an application to assign an Experimental License.<sup>45</sup>
- On December 18, 2001, the Commission granted the applications filed by Lockheed Martin Global Telecommunications, COMSAT Corporation, and COMSAT General Corporation, together with Telenor Satellite Services Holdings, Inc., Telenor Satellite, Inc., and Telenor Broadband Services AS, to assign certain Title II common carrier authorizations and Title III radio licenses held by COMSAT to Telenor.<sup>46</sup> This proposed assignment was in connection with Telenor's proposed acquisition of

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<sup>42</sup> See Application of New Skies Satellites N.V. (Transferor) and New Skies Satellites B.V. (Transferee) Transfer Control of FCC Licenses and Authorizations Held by New Skies Satellites N.V. and New Skies Networks, Inc., 19 FCC Rcd 21232 (2004).

<sup>43</sup> See e.g., Turner Broadcasting System, Inc., SES-RWL-20050203-00130, authority granted February 3, 2005 to communicate with the New Skies 806 satellite at 319.5° E.L., and the NSS-5 satellite at 183° E.L., Stratos Offshore Services Company, SES-AMD-20040927-01463, authority granted September 30, 2004 to communicate with the NSS-7 satellite at 338.5° E.L., and Terremark Worldwide Incorporated, SES-MOD-20041210-01816, authority granted February 8, 2005 to communicate with the NSS-7 satellite at 22° W.L.

<sup>44</sup> See Lockheed Martin Corporation, Comsat Government Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and Its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214, *Order and Authorization*, 15 FCC Rcd 22910 (2000), *erratum*, 15 FCC Rcd 23506 (Sat. and Radio. Div., 2000); *recon. denied*, 17 FCC Rcd 13160 (2002).

<sup>45</sup> Public Notice, Report No. SES-00288, May 16, 2001.

<sup>46</sup> Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land MobileRadio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, *Order and Authorization*, 16 FCC Rcd 22897 (2001), *erratum*, 17 FCC Rcd 2147 (Int'l Bur. 2002).

Cosat Mobile Communications (“CMC”), a business unit of COMSAT Corporation. On January 11, 2002, Telenor completed its purchase of substantially all of the assets of CMC, and all of CMC's licenses and authorizations were transferred to Telenor pursuant to Commission authorization.<sup>47</sup>

- On May 28, 2004, COMSAT General Corporation, Lockheed Martin, COMSAT New Services, Inc. and Intelsat LLC and Intelsat MTC LLC filed a series of applications associated with a transaction by which Intelsat, Ltd. would acquire Lockheed Martin’s COMSAT General businesses.<sup>48</sup> On October 27, 2004, the International and Wireless Bureaus granted the applications, subject to compliance by Intelsat LLC, Intelsat MTC LLC and Intelsat Government Solutions Corporation with the terms of the Intelsat Commitment letter with the Criminal Division of the U.S. Department of Justice, the U.S. Department of Homeland Security, and the Federal Bureau of Investigation.<sup>49</sup> On October 29, 2004, the transaction was completed.<sup>50</sup>

### *Direct Access*

- Section 641(a) of the ORBIT Act requires that users and service providers be permitted to obtain Level 3 direct access to INTELSAT capacity.<sup>51</sup> Previously, the Commission decided in a rulemaking proceeding that Level 3 direct access is in the public interest.<sup>52</sup> The concept of direct access became moot with INTELSAT privatization on July 18, 2001, because Intelsat LLC, as a private company, does not have signatories.
- Prior to INTELSAT’s privatization, the Commission implemented the requirement in Section 641(b) of the ORBIT Act that the Commission complete a rulemaking “to determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment directly from INTELSAT to meet

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<sup>47</sup> See Comments Invited on Telenor Satellite Services Holdings, Inc. Petition for Declaratory Ruling on Inapplicability of Cost Accounting Requirements, *Public Notice*, 17 FCC Rcd 2444 (2002).

<sup>48</sup> Cosat General Corporation, Lockheed Martin Global Telecommunications LLC, Cosat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC, Seek FCC Consent to Assign Licenses and Authorizations and a Declaratory Ruling on Foreign Ownership, Pleading Cycle Established, *Public Notice*, IB Docket No. 04-235, 19 FCC Rcd 11390 (2004).

<sup>49</sup> Applications of Cosat General Corporation, Lockheed Martin Global Telecommunications LLC, Cosat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC to Assign Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership, Authorizations Granted, *Public Notice*, IB Docket No. 04-235, 19 FCC Rcd 21216 (2004).

<sup>50</sup> *Intelsat, Ltd. Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934 for the fiscal year ended December 31, 2004*, at 94.

<sup>51</sup> 47 U.S.C. § 765(a).

<sup>52</sup> Direct Access to the INTELSAT System, *Report and Order*, IB Docket No. 98-192, 15 FCC Rcd 15703 (1999). Level 3 direct access permits non-signatory users and service providers to enter into contractual agreements with INTELSAT for space segment capacity at the same rates that INTELSAT charges its Signatories without having to use a Signatory as a middleman.

their service or capacity requirements.”<sup>53</sup> In September 2000, the Commission released a Report and Order requiring Comsat and direct access customers to negotiate commercial solutions if possible to ensure that sufficient opportunity is available for parties to negotiate commercial solutions.<sup>54</sup>

- On March 13, 2001, Comsat submitted a report detailing the results of its negotiations and maintaining that direct access opportunities are increasing for those who want them. For example, the negotiations resulted in a commercial agreement between Comsat and WorldCom. The Commission placed Comsat’s report on public notice, including Comsat’s request to terminate the proceeding.<sup>55</sup> With INTELSAT’s privatization and Intelsat Ltd.’s purchase of Comsat,<sup>56</sup> on November 21, 2002, the Commission released an Order that concluded that the underlying basis for Section 641(b) no longer existed, and terminated the proceeding.<sup>57</sup> In terminating the proceeding, the Commission noted that the termination does not imply any abdication of the Commission’s appropriate oversight of Intelsat Ltd., and that as a U.S. licensee, Intelsat Ltd., will be subject to the same Commission oversight as any similarly-situated company authorized to provide services in the United States.

### ***Regulatory Fees***

- The ORBIT Act authorizes the Commission “to impose similar regulatory fees on the United States signatory which it imposes on other entities providing similar services.”<sup>58</sup> On July 10, 2000, the Commission released an Order concluding that Comsat should pay a proportionate share of the fees applicable to holders of Title III authorizations to launch and operate geosynchronous space stations.<sup>59</sup> Consistent with past decisions, the Commission stated that the costs attributable to space station oversight include costs directly related to INTELSAT signatory activities and are distinct from those recovered by other fees that Comsat pays, such as application fees, fees applicable to international bearer circuits, fees covering Comsat’s non-Intelsat satellites, and earth station fees.<sup>60</sup> In 2002, the Circuit Court of Appeals for

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<sup>53</sup> 47 U.S.C. § 765(b).

<sup>54</sup> Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly, *Report and Order*, IB Docket No. 00-91, 15 FCC Rcd 19160 (2000).

<sup>55</sup> Public Notice, Report No. SPB-166, April 6, 2001.

<sup>56</sup> On October 25, 2002, the Commission approved the assignment of various earth station licenses, private land mobile radio licenses and international 214 applications from Comsat Corporation to Intelsat, Ltd.

<sup>57</sup> Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly, *Order*, IB Docket No. 00-91, 17 FCC Rcd 24242 (2002).

<sup>58</sup> 47 U.S.C. § 765a(c). A 1999 decision of the United States Court of Appeals for the District of Columbia Circuit in *PanAmSat Corp. v. FCC*, 198 F.3d 890 (D.C. Cir. 1999), set aside and remanded the Commission’s 1998 fee order, which did not assess a fee against Comsat.

<sup>59</sup> *In re* Assessment and Collection of Regulatory Fees for Fiscal Year 2000, MD Docket No. 00-58, 15 FCC Rcd 6533 (para. 17) (2000).

<sup>60</sup> *Id.*

the District of Columbia reviewed the Commission's decision and held that the Commission's actions to impose regulatory fees on Comsat were justified on the basis that the underlying policy of Section 9 of the Communications Act of 1934, favoring recovery of regulatory costs gave the Commission good reason to require Comsat to bear "its proportionate share of (space station) fees."<sup>61</sup>

- Post-privatization, Intelsat, as a U.S. licensee, has been fulfilling its obligations and paying the requisite regulatory fees as mandated by Section 9 of the Communications Act 1934.

## **B. Status of INTELSAT Privatization**

Intelsat privatized and became a U.S. licensee, as of July 18, 2001. As part of its decision to privatize INTELSAT, the Assembly of Parties (comprised of the governments party to the Inmarsat Convention) retained a small residual intergovernmental organization known as the International Telecommunications Satellite Organization ("ITSO"). ITSO, through a "Public Services Agreement" with Intelsat LLC, monitors the performance of the company's public service obligations to maintain global connectivity and global coverage, provide non-discriminatory access to the system, and honor the lifeline connectivity obligation to certain customers, specifically, those customers in poor or underserved countries that have a high degree of dependence on Intelsat LLC.<sup>62</sup> Under these commitments, the privatized Intelsat LLC keeps capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years, while the lifeline users are only committed for its capacity on a year-to-year basis at their option. ITSO has no operational or commercial role.

Upon privatization, substantially all of INTELSAT's operational assets and liabilities were transferred to several companies within an affiliated group with a holding company structure. The companies have created fiduciary Boards of Directors and based on the record before us, the selection procedure for members of the Board of Directors of Intelsat, Ltd. has resulted in a board that is compliant with the ORBIT Act. In addition, our review of the record before us supports our finding that privileges and immunities enjoyed by the pre-privatized INTELSAT had been terminated consistent with the requirements of the ORBIT Act. The licensing companies have licenses through notifying administrations in countries (U.S. and U.K.) that have effective competition laws and have commitments under the WTO Agreement that include non-discriminatory access to their satellite markets.<sup>63</sup> These companies are subject to U.S. or U.K. licensing authorities and conduct satellite coordinations according to ITU procedures under the auspices of these authorities.

In January 2003, Intelsat completed its exchange offer for debt issued by the company, securing \$600 million in long-term financing,<sup>64</sup> and is now subject to information reporting

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<sup>61</sup> See *Comsat Corporation vs. FCC and PanAmSat Corp.*, 283 F.3d 344 (D.C. Cir. 2002).

<sup>62</sup> *INTELSAT Assembly of Parties Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting*, AP-25-3E FINAL W/11/00, para. 6-8 (Nov. 27, 2000) ("2000 Assembly Decision").

<sup>63</sup> *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that form a Global Communications System in Geostationary Orbit*, Intelsat LLC Supplemental Information, at 3 (August 17, 2001).

<sup>64</sup> *Intelsat, Ltd., Form 6-K, Report of Foreign Private Issuer Pursuant to Rule 13a-16 or 15d-16 under the Securities Exchange Act of 1934, for the month of February 2003.*

requirements of the Securities Exchange Act of 1934, as amended. Accordingly, Intelsat is required to file with the U.S. Securities and Exchange Commission an annual report on Form 20-F within six months after the end of each fiscal year. Intelsat last filed a Form 20-F on March 15, 2005, for the fiscal year ended December 31, 2004.

As previously noted, on December 22, 2004, the Commission authorized the transfer of control of Intelsat's licenses and authorizations to Zeus, and the transaction was consummated in January 2005. Intelsat filed a Certification pursuant to Section 621(5)(F) of the ORBIT Act, and on April 8, 2005, the Commission determined that Intelsat's certification was in compliance with Sections 621(5)(F) and 621(5)(G) of the ORBIT Act, and that Intelsat could forgo the requirement for an IPO and public listing of securities. Intelsat is no longer subject to the provisions of Section 602 that prohibited Intelsat from providing "additional services" in the United States.

## **II. Views of INTELSAT Parties on Privatization**

The Commission, in response to the Public Notice for this Report to Congress, has not received any views from INTELSAT Parties<sup>65</sup> regarding privatization.

## **III. Views of Industry and Consumers on Privatization**

As previously noted, Inmarsat and Intelsat responded to the Commission's public notice inviting comments related to the development of this Report to Congress. No reply comments were filed.

### ***Intelsat Privatization Comments***

Intelsat maintains that it is continuing to respond to market forces. Intelsat notes that, since it last filed comments, it had acquired customer contracts and other assets of COMSAT General Corporation, which it maintains enhanced Intelsat's competitive position in providing U.S. government and NATO customers with satellite capacity and services. Intelsat also noted that it consummated the transaction by which it was indirectly acquired by Zeus Holdings Limited, a consortium of private investors, and that with that transaction, Intelsat would be in compliance with Section 621(5)(F) of the ORBIT Act.<sup>66</sup>

Intelsat further stated that its privatization has had a positive impact on the marketplace for communications services, and that Intelsat has been able to offer expanded communications services, thereby promoting competition and benefits for consumers.

### ***Inmarsat Privatization Comments***

Inmarsat notes that in October 2001, the Commission determined that Inmarsat's privatization was consistent with the non-IPO criteria specified in Sections 621 and 624 of the

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<sup>65</sup> The INTELSAT Parties are nations for which the INTELSAT agreement has entered into force. 47 U.S.C. § 769(a)(4)(A).

<sup>66</sup> Intelsat Comments at 2.

ORBIT Act. Inmarsat also notes that, with the October 2004 amendment to the ORBIT Act, Inmarsat could satisfy the remaining requirements by complying with a certification process. Inmarsat states that it submitted a Request for Declaratory Ruling and a certification on November 15, 2004. In that submission, Inmarsat indicated that a majority of the equity interest were acquired by new, non-signatory shareholders.<sup>67</sup>

Inmarsat also notes that on March 11, 2005, it launched the first satellite in its next generation satellite system, Inmarsat-4, and was undergoing in-orbit testing at the time of its filing. The second spacecraft is scheduled for launch in Fall 2005. The third spacecraft, designated as a ground spare, is fully manufactured and undergoing pre-launch testing. Inmarsat states that this next generation network will be capable of providing enhanced mobile satellite service ("MSS") to the United States. Its broadband MSS service, referred to as Broadband Global Area Network ("BGAN"), will be deployed on its network of Inmarsat-4 satellites. Inmarsat further states that these satellites are more spectrum efficient than previous satellites.<sup>68</sup>

Inmarsat points out that its services have been of critical importance to public safety, military, governmental, humanitarian, and commercial users, and that its importance to these users will continue with the new Inmarsat-4 network. Inmarsat also states that the Inmarsat-4 system is expected to provide support for long-range vessel tracking and container monitoring systems that are to be developed in compliance with the Maritime Transportation Security Act.

#### IV. Impact of Privatization

Section 646 requires that the Commission report on the impact of privatization on U.S. industry, jobs, and industry access to the global market.

INTELSAT's privatization was designed to allow Intelsat LLC to continue to operate and provide services in a manner that meets U.S. commercial and governmental, including national security, needs. Privatization has enabled Intelsat to compete freely for all U.S. satellite business opportunities, thereby increasing competition in the U.S. market and encouraging the development of service offerings to U.S. customers.<sup>69</sup> Further, the geographic location of Intelsat service and licensing companies in the United States contribute to jobs and productivity increases in the United States.

Inmarsat's privatization also appears to have had a positive impact on the domestic U.S. market.<sup>70</sup> Privatization has provided Inmarsat the opportunity to develop new services for the U.S. market that potentially will result in the expansion of service options and providers for U.S. customers. This also promises to lead to increased industry competition. As a result of privatization and Commission authorization, distributors were given access rights to distribute Inmarsat services in the United States.

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<sup>67</sup> Inmarsat Comments at 2 and *Inmarsat Certification*.

<sup>68</sup> Inmarsat Comments at 3.

<sup>69</sup> For example, Intelsat has begun providing services other than its traditional space segment services. Intelsat recently launched its North American video fiber network which offers broadcasters an enhanced opportunity to reliably transmit video content to, from and within North America using a global terrestrial and satellite infrastructure, Intelsat Comments at 2.

<sup>70</sup> Inmarsat Comments at 4-5.

Inmarsat maintains that its services promote economic growth and job development in the U.S. Inmarsat describes the use of Inmarsat's system in the Deere Company's precision farming service, and the use of Inmarsat's system for ship operations and crew calling by U.S.-flag vessels. Inmarsat also points to use of its system in managing the sustainability of fisheries, and the use of portable terminals in remote regions by U.S. companies in energy, mining exploration, construction and journalism activities.

In its capacity as Notifying Administration to the ITU for Intelsat's fixed satellite service C-and Ku-band frequency assignments transferred at privatization, the Commission has participated in a number of international coordination negotiations as Intelsat's licensing administration. Since the 2004 Report to Congress, the Commission has participated in coordination meetings with Brazil and Russia on behalf of Intelsat and a number of other U.S. licensees. In fact, a coordination agreement has been concluded with Brazil.

The United States has, in place, a coordination process whereby operators may reach operational arrangements with operators of other administrations. These arrangements are then submitted to the operators' respective Administrations for approval. Once approved by both administrations, the operational arrangements become, or form the basis for, a coordination agreement between the Administrations under the ITU procedures. Since the 2004 Report to Congress, Intelsat has participated in meetings with operators from Brazil and Russia as part of this process. In addition, Intelsat has concluded operational arrangements by correspondence with Argentina and Belarus. In due course, this will lead to coordination agreements between the United States and these foreign administrations.

Finally, both Inmarsat's and INTELSAT's privatization appears to have had a positive impact on the global marketplace for communications services by ensuring increased competition and increased access. Inmarsat and Intelsat have placed a priority on continued provision of service to all portions of the globe. Inmarsat is committed to support global maritime distress and safety services ("GMDSS")<sup>71</sup> and the INTELSAT Assembly of Parties determined that Intelsat LLC should be contractually bound under a Public Service Agreement with the International Telecommunications Satellite Organization to ensure continued global connectivity -- particularly to countries dependent on Intelsat LLC's satellite services.<sup>72</sup>

## V. Summary

The Commission has undertaken a number of proceedings required by or related to the ORBIT Act. The Commission will continue to implement and enforce the requirements of the ORBIT Act. On the whole, we believe that U.S. policy goals regarding the promotion of a fully competitive global market for satellite communications services are being met in accordance with the ORBIT Act. The Commission will continue to inform Congress of the actions it takes to implement the requirements of the ORBIT Act and the impact of those actions in its next annual report.

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<sup>71</sup> *Inmarsat Finance plc. Offering Circular for 7 5/8% Senior Notes*, January 27, 2004, p. 114.

<sup>72</sup> *Intelsat, Amendment 2 to F-1 Registration Statement*, p.35. For example, since Deere & Company's StarFire receivers were authorized to receive Inmarsat signals in the U.S., the improved accuracy on its farming equipment resulted in increased farming equipment capabilities and product demand. *See*, Reply Comments of Deere & Company in the Inmarsat Ventures Limited proceeding (File No. SAT-MS-20040210-00027) filed April 20, 2004, at 2.



Enclosures: Comments received in response to the Commission's Public Notice.

ATTACHMENTS:

Comments, April 8, 2005

Comments of Inmarsat Group Holdings Limited

Comments of Intelsat LLC

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Report to Congress Regarding	)	IB Docket No. 05-156
the ORBIT Act	)	

**COMMENTS OF INMARSAT GROUP HOLDINGS LIMITED**

Inmarsat Group Holdings Limited ("Inmarsat") hereby submits its Comments in response to the *Public Notice* inviting input to be reflected in the Commission's progress report to Congress on the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act" or "Act").<sup>1</sup> The ORBIT Act requires the Commission to annually report on the progress that has been made in the previous year to achieve the objectives of the Act. The current proceeding is associated with the Commission's sixth report, which is due June 15, 2005.

The purpose of the Act is to "promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing . . . Inmarsat."<sup>2</sup> The Act sets forth a series of criteria by which the Commission is to determine whether Inmarsat has privatized in a manner consistent with the goals of the ORBIT Act. In October 2001, the Commission determined that "Inmarsat's privatization is consistent with the non-IPO criteria specified in Sections 621 and 624 of the [ORBIT Act]."<sup>3</sup> Since that time and until this past year, the sole remaining criterion left for Inmarsat to satisfy has been that it conduct an initial public offering ("IPO") in accordance with the Act.

<sup>1</sup> Public Notice, Report No. SPB-211 (rel. Mar. 25, 2005) (the "*Public Notice*").

<sup>2</sup> *Public Notice* at 1.

<sup>3</sup> See *In the Matter of Comsat Corporation d/b/a Comsat Mobile Communications, et al.*, FCC 01-272 at ¶ 4 (rel. Oct. 9, 2001) ("*Market Access Order*").

Last year, Congress amended the ORBIT Act and obviated the need to comply with the Act's IPO requirement. Pursuant to newly added Sections 621(5)(F) and (G), signed into law by President George W. Bush on October 25, 2004, Inmarsat instead can satisfy the ORBIT Act by complying with a new certification process. In particular, Inmarsat may "forgo an initial public offering" if:

- Inmarsat achieves "substantial dilution" of the aggregate "financial interest" of signatories and former signatories," meaning that "a majority of the financial interests in [Inmarsat] is no longer held or controlled . . . by signatories or former signatories;"
- "any signatories . . . that retain a financial interest" in Inmarsat do not possess "effective control" of the company; and
- "no intergovernmental organization has . . . more than a minimal ownership interest in [Inmarsat]."<sup>4</sup>

On November 15, 2004, Inmarsat submitted a Request for Declaratory Ruling and a certification that Inmarsat has met the final ORBIT Act criterion.<sup>5</sup> As set forth in greater detail in that submission, in December 2003, a majority of the equity interests in Inmarsat was acquired by new, non-signatory shareholders in a U.K. court-approved takeover arrangement. Pursuant to those transactions, funds advised by Apax Partners, a leading advisor of private equity funds in the United Kingdom, United States and Western Europe, and funds advised by Permira, a leading European private equity firm, acquired a combined ownership interest of over 51.75% in Inmarsat. An Inmarsat employee benefit trust, some current or previous directors, officers and employees, and an employee benefit trust, hold a 5.70% ownership interest in Inmarsat.

Thus, with 57.46% of the ownership of Inmarsat now held by new, non-signatory shareholders, Inmarsat has achieved substantial dilution of the aggregate financial interest of Inmarsat signatories and former Inmarsat signatories. Effective control of Inmarsat now is

<sup>4</sup> ORBIT Act at §§ 621(5)(F), 621(5)(G).

<sup>5</sup> Request for Declaratory Ruling and Certification, IB Docket 04-439 (Nov. 15, 2004 and supplemented Dec. 16, 2004).

vested in investment funds independently controlled by Apax Partners and by Permira that are not affiliated with any former signatory. Moreover, the sole intergovernmental organization with any interest in Inmarsat, IMSO, has only a "minimal ownership" interest as defined by the ORBIT Act.<sup>6</sup> With Inmarsat having therefore met the requirements of Section 621(5)(F) of the Act, and with the upcoming arrival of Inmarsat's next generation I-4 satellite network that will provide enhanced MSS service to America, a swift and favorable determination on Inmarsat's Request for Declaratory Ruling is critical.

In the next few months, Inmarsat will begin the roll out of its innovative broadband MSS service – Broadband Global Area Network or BGAN, which will be deployed over Inmarsat's new network of Inmarsat-4 satellites that are 6 years and \$1.5 Billion in the making. The I-4 satellites are up to 17 times more spectrum efficient than previous satellites and they will enable the provision of mobile broadband services at rates of approximately half a megabit per second. The new I-4 network and BGAN service are designed to meet the expectations of MSS users for high-speed data transmission "anywhere and any time," and to provide the recognized public policy benefits of MSS to U.S. businesses and consumers nationwide.<sup>7</sup>

The first I-4 spacecraft was launched from Florida on March 11, 2005 and is presently undergoing in-orbit testing in preparation for being placed in service in the next two months. The second spacecraft---planned to serve North America---is nearing completion of its ground test program, and is scheduled for launch this fall. The third spacecraft, currently designated a ground spare, is fully manufactured, is undergoing pre-launch testing, and is

<sup>6</sup> *Market Access Order* at ¶ 41.

<sup>7</sup> *See In re Establishment of Policies and Services Rules for MSS in the 2 GHz Band*, FCC 00-302 at ¶ 1 (rel. Aug. 25, 2000) (recognizing that MSS enhances competition with terrestrial communications services and provides important benefits to all U.S. consumers nationwide).

scheduled to be available for launch by January 2006, when it could be placed into a number of locations to serve the U.S.

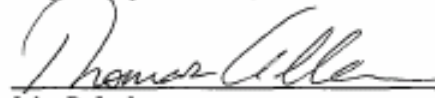
Inmarsat's services have been of critical importance to public safety, military, governmental, humanitarian, and commercial users alike and this will continue to be the case after the launch of the I-4 network. The Inmarsat system is relied on by the Global Maritime Distress and Safety System, the United States Coast Guard, the Federal Aviation Administration, the United States Department of Defense, the United States Air Force VIP planes, including Air Force One, and U.S. law enforcement agencies such as the FBI, Immigration and Customs Enforcement, and Drug Enforcement Administration. Additionally, the Inmarsat-4 system is expected to provide support for the upcoming long-range vessel tracking and container monitoring systems to be developed in compliance with the Maritime Transportation Security Act.

Inmarsat's services promote economic growth and job development in the U.S. in a number of respects, positive effects that will accelerate with the launch of the I-4 satellites and BGAN. The Deere Company uses Inmarsat's satellite communications for its precision farming service. U.S. flag vessels have integrated Inmarsat communications into ship operations and to provide crew calling. The Vessel Monitoring System that industry and government rely on to manage the sustainability of fisheries by tracking commercial fishing vessels and enforcing fishing regulations uses Inmarsat's satellite network. Portable Inmarsat terminals are used in remote regions around the world by American companies engaged in energy and mining exploration and construction projects, and by journalists for digital news gathering. Moreover, Inmarsat works with dozens of service distributors, equipment suppliers, and applications developers across the United States, each of whose participation in the Inmarsat program produces jobs and stimulates new economic growth opportunities.

The Commission already has determined that the presence of Inmarsat in the U.S. market “serve[s] the public interest by increasing competition and providing additional services for U.S. consumers.”<sup>8</sup> A positive determination that Inmarsat has satisfied the ORBIT Act prior to the launch of the next I-4 satellite is important to ensure the continued availability of competitive MSS service in the U.S. market, as well as the continuity of critical services to U.S. customers, industry and government.

For these reasons, Inmarsat urges the Commission to find that Inmarsat has satisfied the final requirement of the ORBIT Act and so report to Congress in the Commission’s sixth report on June 15<sup>th</sup>.

Respectfully submitted,



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April 8, 2005

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<sup>8</sup> *Market Access Order* at ¶ 1.



Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In re:	)	
	)	
Report to Congress Regarding the	)	IB Docket No. 05-156
ORBIT Act	)	

### COMMENTS OF INTELSAT

Intelsat LLC and its affiliated entities (collectively, "Intelsat"), by its counsel, hereby respond to the Federal Communications Commission's ("FCC" or "Commission") request for comments in the above referenced proceeding.<sup>1</sup> The Commission seeks comments in order to compile its sixth report to Congress pursuant to Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act" or "Act").<sup>2</sup>

Intelsat continues to respond to market forces in a competitive environment. Since Intelsat last filed comments in May 2004, it acquired, pursuant to Commission approval,<sup>3</sup> the customer contracts and other assets of end-to-end communications services integrator COMSAT General Corporation. The acquisition, which included the rights to

<sup>1</sup> *International Bureau Information: Report to Congress Regarding the ORBIT Act*, Report No. SPB-211, DA 05-773, Public Notice (Mar. 25, 2005).

<sup>2</sup> Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002), *as amended*, Pub. L. No. 108-228, 118 Stat. 644 (2004), *as amended*, Pub. L. No. 108-371, 118 Stat. 1752 (2004).

<sup>3</sup> *See Authorizations Granted: Applications of Comsat Gen. Corp., Lockheed Martin Global Telecomms. LLC, Comsat New Servs., Inc., Intelsat LLC, and Intelsat MTC LLC to Assign Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership*, Public Notice, 19 FCC Rcd 21216 (2004).



FCC and other licenses, has enhanced Intelsat's competitive position in providing U.S. government and North Atlantic Treaty Organization ("NATO") customers with satellite capacity and managed satellite-based services.

In addition, on January 28, 2005, pursuant to Commission approval,<sup>4</sup> Intelsat consummated a transaction in which a consortium of private investors indirectly acquired 100 percent of the outstanding capital stock of Intelsat.<sup>5</sup> Earlier, on December 23, 2004, Intelsat had filed with the Commission a petition for a declaratory ruling that, upon consummation of the transaction with the consortium, Intelsat would be in compliance with Section 621(5)(F) of the Act.<sup>6</sup> Specifically, as required by Section 621(5)(F), Intelsat certified that, upon consummation of the sale to the consortium: (1) all existing signatory or former signatory financial interests in all Intelsat entities would be eliminated, (2) no signatories or former signatories would possess, together or individually, effective control of a successor entity of INTELSAT, and (3) no intergovernmental organization would have any ownership interest in a successor entity

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<sup>4</sup> *Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee; Consolidated Application for Consent to Transfer of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended*, Order and Authorization, 19 FCC Rcd 24820 (2004).

<sup>5</sup> See Letter from Tom W. Davidson, Akin Gump Strauss Hauer & Feld LLP, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, (Jan. 28, 2005) (noting the consummation of the transaction approved by the Dec. 22, 2004 Order and Authorization in IB Docket No. 04-366).

<sup>6</sup> Intelsat, Ltd., Petition for Declaratory Ruling that Intelsat, Ltd. Complies with Section 621(5)(F) of the ORBIT Act, IB Docket 05-18 (filed Dec. 23, 2004); *see also* Intelsat, Ltd., Supplemental Submission, IB Docket No. 05-18 (filed Feb. 9, 2005). Effective October 25, 2004, Congress amended the ORBIT Act to provide two methods for Intelsat to satisfy the Act's IPO requirement. As originally contemplated in the statute, Intelsat may conduct an IPO in accordance with Section 621(5)(A). *See* ORBIT Act, § 621(5)(A). Alternatively, under Section 621(5)(F), Intelsat may forgo an IPO and public listing of securities if it otherwise achieves substantial dilution of former signatory ownership, eliminates former signatory control, and has no intergovernmental organization ownership. *See id.*, § 621(5)(F).

of INTELSAT.<sup>7</sup> The pleading cycle on that petition concluded on March 1, 2005,<sup>8</sup> and the petition remains pending.

Intelsat's privatization continues to have a positive impact on the global marketplace for communications services. The acquisitions discussed above have allowed and will allow Intelsat to offer expanded communications services, thus "promot[ing] [the] fully competitive global market for satellite communications services" envisioned by Congress.<sup>9</sup> This, in turn, benefits consumers, who have more choices available to them at more competitive prices.

Respectfully submitted,

Intelsat LLC

*/s/ Amy E. Bender*

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April 8, 2005

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<sup>7</sup> See ORBIT Act, § 621(5)(F).

<sup>8</sup> *Intelsat, Ltd. Files Petition for Declaratory Ruling Pursuant to Section 621(5)(F) of the Open-Market Reorganization for the Betterment of International Telecommunications Act, as Amended*, Public Notice, 20 FCC Rcd 662 (2005).

<sup>9</sup> ORBIT Act, § 2.